1994.

SUPREME COURT OF THE UNITED STATES.

No. 186.

WM. H. WINDER, PLAINTIFF IN ERROR,

vs.

ANDREW D. CALDWELL, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE U. STATES FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation	2	1
Copy of appeal bond	3	2
Style of court	5	2
Parties	5	3
Scire facias	6	3
Notice of set off	11	5
Verdict for plaintiff	13	6
Judgment	14	6
Plaintiff's 1st bill of exceptions	15	7
Do. 2d do. do	17	8
Do. 3d do. do	18	8
Plaintiff's claim referred to in plaintiff's 1st exception	21	9
Defendant's 1st bill of exceptions	32	13
Do. 2d do. do	34	14
Do. 3d do. do	36	15
Do. 4th do. do	37	15
Do. 5th do. do	38	16
Do. 6th do. do	39	16
Do. 7th do. do	40	17
Do. 8th do. do	41	17
Do. 9th do. do	42	17
Do. 10th do. do	42	18
Writ of error produced	43	18
Clerk's certificate and seal	44	18

Gideon, Print.

1993

Writ of error.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to the judges of the circuit court of the District of Columbia, for the county of Washington, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you, or some of you, between Andrew D. Caldwell, plaintiff, and William H. Winder, defendant, a manifest error hath happened to the great damage of the said defendant, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, which of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court.

Issued this 24th day of December, 1850

JOHN A. SMITH, *Clerk.*

Citation.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Andrew D. Caldwell, greeting.

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the circuit court of the District of Columbia, for the county of Washington, wherein William H. Winder is plaintiff in error, and you are defendant in error; to show cause, if any there be, why judgment rendered against the said plaintiff in error should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable W. Cranch, chief judge of the circuit court of the District of Columbia, this 24th day of December, 1850.

W. CRANCH.

Service acknowledged.

JOS. H. BRADLEY,
Attorney for A. Caldwell.

Appeal bond.

Know all men by these presents, that we, William H. Winder, Charles H. Winder, and Lewis Johnson, are held, and firmly bound unto Andrew D. Caldwell, in the full and just sum of eleven thousand dollars, current money, to be paid to the said Andrew D. Caldwell, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this 24th day of December, 1850.

Whereas, at a circuit court of the District of Columbia, sitting for the county of Washington, at October term, 1850, in a suit pending in the said court wherein the said Andrew D. Caldwell was plaintiff, and the said William H. Winder was defendant, judgment was rendered against the said defendant, and he having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Andrew D. Caldwell, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next:

Now the condition of the above obligation is such, that if the said William H. Winder shall prosecute his writ to effect, and answer all damages and costs, if he fail to make his plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue.

W. H. WINDER, [L. S.]
CH. H. WINDER, [L. S.]
LEWIS JOHNSON. [L. S.]

Signed, sealed, and delivered, in the presence of—
WALTER D. DAVIDGE.

Approved—
W. CRANCH.

True copy.

Test: JNO. A. SMITH, *Clk.*

DISTRICT OF COLUMBIA, *to wit:*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the third Monday of October, being the twenty-first day of the same month, in the year of our Lord one thousand eight hundred and fifty, and of the independence of the United States the seventy-fifth.

Present, the honorable William Cranch, chief judge; James S. Morsell and James Dunlap, associate judges; Richard Wallach, esq., marshal; John A. Smith, clerk.

In the record of proceedings of the said court, amongst others are the following, to wit:

1996.
3

ANDREW D. CALDWELL
vs.
WILLIAM H. WINDER.

Be it remembered, that heretofore, to wit, on the twentieth day of March, in the year of our Lord one thousand eight hundred and forty-nine, the said plaintiff, by Joseph H. Bradley, esquire, his attorney, prosecuted and sued forth out of the circuit court here, the United States writ of scire facias, to the marshal of the District of Columbia directed, in the words and of the tenor following, to wit:

Sci. fa.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to the marshal of the district of Columbia, greeting:

Whereas a certain Andrew D. Caldwell did, on the ninth day of March, in the year of our Lord one thousand eight hundred and forty-nine, file in the clerk's office of the circuit court of the District of Columbia, for the county of Washington, his certain account or claim against a certain William H. Winder, amounting to the sum of fourteen thousand five hundred and eighty-six dollars and thirty-nine cents, for lumber and other materials furnished at his request, and used by him, in and about the construction and erection of a certain building or house erected by him on lots 1, 2, 3, the east half of lot 4, and the south half of lot 22, in square one hundred and sixty-nine, according to the original plan, and being lots 1, 2, 3, 4, 17, 18, and 19, according to Davidson's sub-division of said square, in the city of Washington, in the District aforesaid, in pursuance of the act of Congress of the United States, entitled "An act to secure to mechanics and others payment for labor done and materials furnished in the erection of buildings in the District of Columbia," which said account has been enrolled among the records of said court, as by the record thereof in the office of the clerk of the said court remaining, manifestly appears; and the said Andrew D. Caldwell alleges that the said sum of fourteen thousand five hundred and eighty-six dollars and thirty-nine cents is still due and unpaid, and that judgment remains to be rendered upon the account and record aforesaid.

Therefore you are hereby commanded, that you make known unto the said William H. Winder, according to the act of Congress aforesaid, that he be and appear before the circuit court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the fourth Monday of March instant, to show cause, if any he hath, why the said court ought not to render judgment for the sum of $14,586 39, upon the record aforesaid, according to the force and effect of the said act of Congress, and further to do what the said court shall then and there consider concerning him in this behalf; and have you

then and there this writ, and make return of the manner in which you shall have executed the same.

Hereof fail not, as you will answer the contrary at your peril.

Witness the honorable W. Cranch, chief judge of our said court, at the city of Washington, the 2d day of March, 1849.

Issued this 20th day of March, 1849.

JNO. A. SMITH, *Clerk.*

March term, 1849.

At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-nine, and the day of the return of the aforegoing writ, comes again into the circuit court here the said plaintiff, by his attorney aforesaid, and the marshal of the District aforesaid, to whom the said writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

"Scire fici."

R. WALLACE, *Marshal.*

Def'ts appearance, rule plea, and continuance to Oct. term, 1849.

And the said defendant being called, appears in court here by Walter D. Davidge, esquire, his attorney; thereupon, on motion of the said plaintiff, by his attorney, it is ruled by the court here, that the said defendant answer to the writ of aforesaid, or judgment by the court here will be entered against him in default thereof. Whereupon the said defendant, by his attorney aforesaid, defends the wrong and injury, when, &c., and prays leave of the court here to imparle until the third Monday of October next, and then to answer to the writ of scire facias aforesaid, and to him it is granted; the same day is given to the said plaintiff also.

Non assumpsit and issue joined; venire facias to March, 1850.

At which mentioned third Monday of October, in the year eighteen hundred and forty-nine, to which said day the said defendant had leave to imparle, and then to answer to the writ of scire facias aforesaid, comes again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by his attorney aforesaid; and the said defendant, by his attorney aforesaid, as before, defends the wrong and injury when, &c., and saith that he did not assume upon himself in manner and form as is in and by the scire facias aforesaid above against him alleged, and of this he puts himself upon the country; and the said plaintiff, by his attorney aforesaid, in like manner, and so forth; therefore let a jury thereon appear before the court here, on the fourth Monday of March next, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c.; the same day is given to the said parties then and there, and so forth.

At which mentioned fourth Monday of March, in the year eighteen hundred and fifty, comes again into the circuit court here, as well the

said plaintiffs by their attorney aforesaid, as the said defendant by his attorney aforesaid; thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties by their attorneys aforesaid, and by order of the court here thereon, the said cause is continued until the third Monday of October next.

And now at this day, to wit, the said third Monday of October, in the year eighteen hundred and fifty, comes again into the circuit court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant by his attorney aforesaid; and the said defendant, by his attorney aforesaid, files in court here the following notice of set off, to wit:

Set off.

ANDREW D. CALDWELL
vs.
WILLIAM H. WINDER.

Take notice that the above named defendant, not admitting the existence of any claim against him of the above named plaintiff, or the due performance of any part of the contract filed by the said plaintiff in the clerk's office, will give in evidence and insist that the said plaintiff did not perform and furnish certain work and materials called for by the said contract, whereby the benefit stipulated for by the said defendant was not received; that among other things the said plaintiff did not perform the work or finish the materials for the items mentioned in the annexed account: and that the said defendant will set off and allow so much of the amount of the said account against any demand of the said plaintiff, to be proved at the trial, as will be sufficient to satisfy and discount said demand, according to the statute in such case made and provided.

And further take notice, that the said defendant will give in evidence and insist, that there were defects in the said work and materials, and delay in the execution and furnishing of the same, as called for by the said contract; that said delay was for a period of not less than one month, and that the sum of twenty-five dollars per day therefor ought to be deducted from any demand of the plaintiff, to be proved at the said trial.

WALTER D. DAVIDGE,
Att'y for defendant.

Service acknowledged.

JOS. H. BRADLEY,
Plaintiff's attorney.

22d November, 1850.

Account referred to by above notice.

November 16th, 1850.

59,800 feet ceiling joist for plastering, at $2\frac{1}{4}$	-	$1,345 50
25,900 " stripping to walls, at $2\frac{1}{8}$	-	550 37

1,249	feet	angle bead, at 10½	-	-	-	-	131	14½
21	"	moulded base, 8 inches wide, at 12	-			-	2	52
24	"	" " 11 " " at 20	-			-	4	80
48	"	beaded box, 7 " " at 8	-			-	3	84
12,628	"	centering to 5th story reset, at 4	-			-	505	12
							$2,543	29½

Whereupon, for trying the issue aforesaid, it is ordered by the court here, that twelve persons from the panel of petit jurors returned to the court here by the marshal of the District of Columbia, be called, who being called come, to wit:

Jury.

1. George McNier,
2. Theodore Wheeler,
3. Edward H. Edelin,
4. B. S. Bailey,
5. Offutt Boutcher,
6. Z. M. P. King,
7. Pierce Shoemaker,
8. Elkanah Waters,
9. Joseph Follansbee,
10. Otho Muncaster,
11. Jno. H. Noyes,
12. Michael Keller.

Verdict.

Who being duly empannelled and sworn to say the truth in the premises, upon their oath do say, that the said defendant did assume upon himself in manner and form as in the writ of scire facias aforesaid above against him is alleged; and they assess the damages of the said plaintiff, by reason of the nonperformance of the promise and assumption aforesaid of the said defendant, to the sum of four thousand seven hundred and forty-six dollars, current money, with interest from 9th March, 1849.

Judgment.

Therefore, it is considered by the court here, that the said plaintiff recover against the said defendant, as well the said sum of four thousand seven hundred and forty-six dollars current money, with interest, from 9th March, 1849, by the jurors aforesaid in form aforesaid assessed, for his damages which he had sustained by reason of the nonperformance of the promise and assumption aforesaid.

Costs.

As the sum of one hundred and thirty-eight dollars and fifty-nine cents by the court here unto him, the said plaintiff, on his assent, adjudged for his costs and charges by him about his suit in this behalf laid out and expended; and the said defendant, in mercy, &c.

Test: JNO. A. SMITH, *Cl'k.*

Memorandum. Before the jurors aforesaid retired from the bar of

the court here, the said plaintiff and defendant, by their attorneys aforesaid, filed in court here the following bills of exceptions, to wit:

Plaintiff's 1st bill of exceptions.

ANDREW D. CALDWELL
vs.
WILLIAM H. WINDER.

On the trial of this cause, the plaintiff, to maintain the issue on his part joined, offered and read in evidence without objection the contract and specifications, signed by the parties respectively, (copied in page ,) and gave evidence tending to show that said contract and specifications referred to certain plans of the building therein referred to, which had been prepared by Th. U. Walters for the defendant, and upon which defendant had invited bids for the said building; and afterwards certain other plans in addition to, and in some respects modifying, the said plans of said Walters, had been prepared by the direction of the defendant; under which modified plans, with certain alterations required by the defendant, the plaintiff did the work specified in said contract, and defendant took possession of said building before the said contract was fully completed, and rented out a portion of it, and hath continued to hold it to this time. He further gave evidence to show that he did, at the request and for the use and benefit of the defendant, furnish the materials and do the work on said building, particularly set out in the account for extra work filed in said cause, and the value thereof; that the principal part of said contract work and of said extra work was done about and before the 1st October, 1848, but the completion thereof was delayed to accommodate the defendant, and the contract work and part of the said extra work was finished in February, 1849, and the claim for his lien on said building was filed by the said plaintiff in March, 1849, as follows: (Inserted on page 22, &c.) There the plaintiff rested. And thereupon defendant prayed the court to instruct the jury, as follows: "If the jury shall believe, from the evidence aforesaid, that the work and materials mentioned in the open account filed by the plaintiff in the clerk's office, and offered in evidence by him as extra work and materials, were not done and furnished, *on* any part thereof was not done and furnished, within three months before the filing of the claim in the clerk's office, then the plaintiff is not entitled to recover in this action for such work and materials claimed as extra, or such part thereof," which instruction the court gave; to the giving of which said instruction the plaintiff excepts, and prays the court to sign and seal this his first bill of exceptions, and to cause the same to be enrolled according to the statute, which is done this 26th day of November, 1850.

W. CRANCH, [SEAL.]
JAS. DUNLOP. [SEAL.]

Plaintiff's 2d bill of exceptions.

On the further trial of this cause the defendant, to maintain the issue on his part joined, "offered to give evidence tending to show that certain portions of the work required by said contract and specifications and plans had been for his benefit, and by his direction dispensed with in the progress of the said building, and claimed the right to rebate the same from the contract price for the said building, for the purpose of showing what work was actually done and what materials were actually furnished, so as to ascertain the extent of the plaintiff's lien on the building." And the plaintiff, by his counsel, objected thereto, and the court admitted the same, and plaintiff excepts thereto, and prays the court to sign and seal this his 2d bill of exceptions, and to cause the same to be enrolled according to the statute; which is done this 3d day of December, 1850.

W. CRANCH, [SEAL.]
JAS. DUNLOP. [SEAL.]

Plaintiff's 3d bill of exceptions.

On the further trial of this cause the defendant, to maintain the issue on his part joined, "offered to give in evidence, by Mr. Gilpin, who was the architect of the building, that after the said contract and specifications had been signed by the said parties, the said plaintiff admitted that he was by that contract bound to do the carpenter's work for flat ceilings in all the rooms of said building; the witness stated that the plaintiff, on the invitation of defendant, made a bid in writing for the carpenter's work of said building, including all the material parts thereof, and afterwards defendant stated to witness that Mr. Downer had also bid in writing for said work, but he was higher than Mr. Caldwell, and he had given the contract to Mr. Caldwell. That there was a good deal of conversation and negotiation between them before the contract was signed, but he could not recollect any distinct or specific alteration from said bid. He did not know that the written bid of said Caldwell had been accepted by the defendant, or became a part of the contract. There was after the bid was made much negotiation between the parties.

It was also admitted, that neither the contract nor the specifications refer to, nor do the plans exhibit, any such flat ceiling.

And the plaintiff objects to the admissibility of said evidence, but the court overrules the objection, [and] admits the evidence, and plaintiff, by his counsel, prays the court to sign and seal this his 3d bill of exceptions, and to cause the same to be enrolled according to the statute; which is done accordingly this second day of December, 1850.

W. CRANCH, [SEAL.]
JAS. DUNLOP. [SEAL.]

Claim of Andrew D. Caldwell, referred to in plaintiff's first bill of exceptions, page 16.

PHILADELPHIA, *February 6th*, 1849.

William H. Winder, esq., to A. D. Caldwell, DR.

1848.		
	To contract for work, &c., as per agreement, for building, corner of F and 17th street, in the city of Washington, D. C.	$10,500 00
September 1	To sundry extra work done to the above building:	
1	44 window beads 44 ft. each, 1760 ft., at 10 cents a foot..	176 00
1	12 flue beads, per each 624 feet, at 10 cents.....	62 40
1	794 ft. lumber in beads, a. 3½.....	23 82
1	45 extra doors, and jamb casings, mouldings, transom sash, &c., each $20.....	900 00
1	80 window frames furred out at head and sill, carpenter work, lumber, nails, &c., each 1 50.....	120 00
1	4 inch extra wide jamb casings to windows front and back on account of 4 inch piers of bricks, average 20 ft., each at 6 cents, for carpenter work and lumber.....	96 00
1	19 sky lights, beaded casings up to roof, carpenter work, lumber, and nails, at 6 60 each.....	125 40
1	9 window frames, sash, casings complete, lumber, carpenter work, nails, pullies, &c., each $25.....	225 00
1	22 extra centres in wall, openings in 5th story back of entablature; carpenter work, lumber, nails, setting, &c., $1 each.....	22 00
1	55 arch centres, 5th story ceiling, carpenter work, lumber, nails, and sundries, each arch about 8 ft. span, 21 ft. long, at $13 60.....	748 00
1	195 ribbs in all the passages, carpenter work, lumber, nails, and sundries, at 80 cts. each.....	166 00
1	10 half groines to stairs and passages $3.....	30 00
1	casing and shoring up 5 folding doorways as per bill rendered some time ago.....	88 92
1	extra putting up and down, and up again, a centre at vestibule door on F street, upon door.....	5 00
1	20 extra small groines at cellar window, $1 each.....	20 00
1	18 followers made for flues in brickwork.....	4 00
1	boarding up marble work all round the building; lumber, carpenter work, and nails.....	40 00
1	30 patterns walled in for balcony brackets, carpenters work, &c.....	6 00
February 1	boarding up cellar windows, 600 ft. bds., and 3 days work, by order of Mr. Cooper, $1 56.....	13 00
1	boarding up and hanging rough door NW. corner of building by order of Mr. Cooper.....	5 00
1	338 ft. yellow pine, and fixing up door arches 1st story, lumber, carpenters, &c., to secure arches.....	11 94
1	putting on revede eyes in all the 2d story frames, and all the 3d and 4th story, including screws, carpenter work, and freight from Philadelphia, 114 frames, at 75 each..	85 50
1	paid Thomas Lewis cash bill for brick work to lay sills for 5 foulder doors.....	2 50
1	extra work at a large privy, carpenter work, lumber, and nails.....	45 00
1	one large folding gate in yard.....	13 00
1	extra centering in 2d story.....	529 60
1	extra work, and lumber and nails, for 3d story centering.	482 31
1	extra work and materials on balcony of 1 foot wider than it was to be.....	50 00
		$14,586 39

To John A. Smith, esq., clerk of the circuit court of the District of Columbia, for the county of Washington.

You will please file the above and annexed account with the exhibits marked A and B, against William H. Winder, showing due me the sum of $14,586 39 for materials furnished, and work done, for the said W. H. Winder by me in and about the erection and construction of the buildings recently erected on lots one, two, three, the east half of lot four, and the south half of lot twenty-two, in square one hundred and sixty-nine, in the city of Washington, D. C., according to the original plat of said city, and being lots No. 1, 2, 3, 4, 17, 18, and 19, in said square, according to Davidson's subdivision of the same, which building fronts one hundred and one feet on 17th street west, and two hundred and nine $\frac{7}{12}$ feet on F street north. This claim is filed by me with you under the provisions of the act of Congress entitled "An act to secure to mechanics and others payment for labor done and materials furnished in the erection of buildings in the District of Columbia," approved the 2d March, 1833, and for the purpose of obtaining for said claim the benefit of the lien provided by said act of Congress on said house and buildings constructed and erected as aforesaid.

A. D. CALDWELL. [SEAL.]

This covenant of agreement, made this eighth day of July, 1847, between A. D. Caldwell, of the city of Philadelphia, builder, of the one part, and William H. Winder, of the said city, of the other part; witnesseth: That the said A. D. Caldwell contracts to furnish all necessary materials, and do all the carpenter's work required to a certain house to be erected in the city of Washington, D. C., at the corner of F and 17th street, agreeably to specifications and to plans to be furnished said Caldwell; the work is to be promptly executed in the best manner, so that no delay shall be occasioned to the builder by having to wait for the carpenter's work; every portion of the carpenter's work necessary to the completion of the building is intended to be included in this contract; window sash mahogany, hand railing to the whole of the stairs, &c., &c. For the full and faithful and entire completion of every portion of said contract, the said Wm. H. Winder is to pay to the said A. D. Caldwell the sum of ten thousand five hundred dollars, in manner and on conditions following, when the window frames shall have been set in the first and second stories six hundred dollars; when the frames shall be set in the remaining three stories, and door frames put up, seven hundred dollars, when roofed ten hundred dollars; when centering shall have been *been* completed, and when stripping shall have been completed, seven hundred dollars each; when windows trimmed, sash and doors hung, seven hundred dollars; when washboards put down, and fastenings put on doors, ten hundred dollars, and balance finished and releases furnished.

In any and in every case in which the carpenter shall occasion delay to the building, the sum of twenty-five dollars per day shall be deducted

for each and every day so delayed from the amount to be paid by this contract; and it is also expressly agreed that if at any time the delay shall exceed a week, that the said Winder shall be at liberty to employ other persons to go on and complete the work, and to deduct from the amount of this contract the sum which may be paid for thus completing the contract. It is clearly understood that the carpenter shall always be ready to put up this work speedily, so as to occasion no delay to the builder. The eyes for the window frames, locks and hinges and screws for the doors, and weights for the windows, to be furnished by W. H. Winder, but to be put on by the said Caldwell, and every thing else connected with the carpenter's work to be finished by said Caldwell, of whatsoever kind.

Signed, W. H. WINDER,
A. D. CALDWELL.

It is understood and agreed that there [is] to be no inside shutters to any of the windows, but to be finished complete without them.

September 15th, 1847, paid on account of the above contract $600.

The following are the specifications referred to in the contract between the subscribers.

Signed, W. H. WINDER,
A. D. CALDWELL.

July 8th, 1847.

Carpenter's work.

All the lumber to be of good quality, well seasoned, and free from unsound knots and shakes, and the carpenter's work to be executed in the most substantial and workmanlike manner. All the window frames to be *rerral* and made for 1¾ inch sash, and finished on the outside with an oval and bead, as represented in the drawing, and to have revealed hinges for shutters; all the sash to be double hung.

The following are the number and dimensions of the windows:

19	windows in	1st	story,	12	lights,	13 x 20 each.
14	"	"		12	"	12 x 20 "
22	"	2d		18	"	13 x 24 "
16	"	"		12	"	12 x 22 "
22	"	3d		12	"	13 x 21 "
16	"	"		12	"	12 x 21 "
22	"	4th		12	"	13 x 18 "
16	"	"		12	"	12 x 18 "
16	"	5th		6	"	12 x 20 "

All the front windows and back windows of the wing on 17th street inside shutters, panelled on the face, and bead and butts on the back, those of the 1st and 2d stories to fold in boxes, and to be finished on the inside with a flat ovolo and bead of six inches in width, and those of the 3d and 4th stories to fold against the jambs with a similar inside

dressing of 4 inches in width, to sills of each window, (except those that extend to the floor,) to be finished with a moulded sinbase of 6 inches in depth, returned within itself under the outer line of each architrave moulding. A window to be made under and over each half pace of the stairs, at the western end of the building; fifty-three inside doors, in the first and second stories, each to be 3 feet 4 inches wide, 7 feet high, and two inches thick, with two sunken panels on each side, finished with a flat ovolo moulding. The jamb casings to be solid, and the dressings to correspond with those of the windows. A transom light to be introduced over each door, of 8 lights, 9 × 12, hung on pivots, and properly balanced. Six folding doors in first and second stories. Those in the second story to be 8 feet wide and 10 feet high, and 2 inches thick, panelled to correspond with the small doors, and turned in the same manner; 75 inside doors in the 3d, 4th, and 5th stories, 1½ in. thick, panelled on the outside, and bead and butt on the inside, with transom lights similar to those on the 1st and 2d stories. Three outside front doors, each to be 2½ inches thick, finished with deep sunken panels on the outside, extending the whole height, and bead and flushed on the inside; each door to have a transom light on a moulded impost. The two outside doors leading into the yard to have side lights, the one under the landing of the stairs to have a clear opening of 5 feet by 7 feet high, and to be made in two folds, the side lights to show light of 8 in. in width. The one in the passage to be five feet wide by 7 feet 6 in. high in the clear, with 12 inches side lights, and a square transom light of 20 in. in height; both of these doors to be panelled on the outside, and bead and butt on the inside; 18 sky-lights in the roof to light the front rooms and entries of the 5th story, each sky-light to be formed of a single plate of thick coarse glass, 14 × 24, let into a wooden frame, and connected with the roof in a manner similar to a trap door, with hinges, and a toggle joined iron lever for the purpose of opening and shutting it. The roof to be framed of 3 × 10 joist laid on the walls at proper inclinations, and sheathed with beards to receive the tin. The exterior cornice and architrave mouldings to be made of wood, and well secured to permanent outlookers. All the exterior walls to be stripped on the inside with two-inch strip, 16 in. apart from centre to centre. The privies to be finished with all the necessary seats, floors, and doors, and the roof to be prepared for being covered with tin; all the necessary centring board timbers, lintles, &c., to be furnished, whenever the same may be required; washboards in the first floor, 8 in. wide, on the 2d floor 12 in., on the 3d and 4th floors 7 in., and on 5th floor 6 in., all with bead, &c.; everything necessary for the complete execution of the carpenter's work of the afore mentioned building, which may not have been specified, (including suitable blocking,) in these specifications, nor shown on the plans, to be done in the usual manner of executing work of a smaller character.

The doors and windows to be hung, and locks put upon the doors;

mahogany hand rail on all the stairs. The foregoing on the specifications referred to in the contract between the subscribers.

July 8th, 1847.

(Signed) WM. H. WINDER,
A. D. CALDWELL.

Witness—
(Signed) J. R. BATTEN.

Know all men by these presents, that I, Andrew D. Caldwell, for value received, have assigned, and do hereby assign, unto George H. Smoot and Uhler, $1,092 63, with interest on the same from the 1st January, 1848; unto Preston & Stowell, $642 84; unto Van Reswick & Jones, $267; and unto J. L. Savage, $142 54, of my account against Wm. H. Winder, for work done on, and materials furnished for, his building, erected on square No. 169, in the city of Washington, D. C.; and to secure account, I am about to lay my lien in the circuit court of the District of Columbia, for the county of Washington; and I do hereby authorized and direct the clerk of the said court to enter on his docket in my lien and suit against said William H. Winder the above several sums to the use of the persons respectively above named.

As witness my hand and seal.

A. D. CALDWELL. [SEAL.]

Defendant's first bill of exceptions.

On the further trial of this cause, the defendant, to support the issue joined on his part, gave evidence to prove that the said contract and specifications referred to a set of plans prepared by Richard D. Gilpin, at the instance of the defendant, and which are as follows: (Here reference is made to "the Gilpin plans.")

The defendant further gave evidence to prove, that said plans were prepared by said Gilpin at a time when the plaintiff was constantly with him; that they were fully explained to and understood by the plaintiff, and recognised by him as to part of said contract.

The defendant further gave evidence to prove that portions of the work and materials mentioned in the account or claim filed in the clerk's office as extra were not such, but were called for and required by the said contract and specifications and plans, and that the prices for said work and materials claimed as extra were unreasonable and extravagantly high.

The defendant further gave evidence to show, that during the progress of the building certain portions of the work and materials called for by the said contract, specifications, and plans, were dispensed with at his instance, and with the assent and acquiescence of the plaintiff; and that certain other portions of said work and materials were not done and furnished, or proceeded to be done and furnished, by the plaintiff, according to the said contract, specifications, and plans, and that to the omission thereof the plaintiff never at any time assented.

The defendant further gave evidence to prove that sundry large sums

of money, exceeding in amount $9,000, had been paid by him to the plaintiff for the work and materials done and furnished under the said contract, specifications, and plans, and then offered to show by competent witnesses, that there was delay on the part of the plaintiff in the performance of his said contract; that said delay was not caused by, or in any manner attributable to, the defendants; and that, in consequence of the plaintiff not being ready to put up his work according to said contract, delay was occasioned by him in the construction of the said building of not less than three weeks. To the admission of which evidence so offered, the plaintiff, by his counsel, objected; which objection the court sustained, and refused to allow the said offered evidence to be given to the jury. To which refusal the defendant, by his counsel, excepts, and prays the court to sign, seal, and cause to be enrolled, this his first bill of exceptions, which is accordingly done this 4th day of November, A. D. 1850.

W. CRANCH, [L. S.]
JAS. S. MORSELL. [L. S.]

Defendant's 2d bill of exceptions.

At the further trial of this cause, and in addition to the evidence contained in the aforegoing bill of exceptions, which is made part hereof, the defendant gave evidence to prove that the plaintiff, before and since the date of the said contract, was and has been a resident of the city of Philadelphia, and by occupation a contractor, or undertaker for the construction of houses, and that the plaintiff performed no manual work upon or for the building against which the claim was filed, or in the erecting or constructing of the same, but that said work and labor were done and performed by mechanics and laborers employed by him, and acting under the superintendence and directions of the plaintiff or his agent.

The defendant further gave evidence to prove, that a large portion of the materials found and provided for said building were not furnished for the same by the plaintiff, but by persons employed by him to find and provide the same for the said building.

The defendant further gave evidence to prove, that with the exception of the work and materials dispensed with and omitted as aforesaid, and of a portion of the work and materials claimed as extra, and admitted as such by the defendant, the work and materials done, found, and provided for the said building, were so furnished under and in pursuance of the said contract, specifications, and plans.

The defendant further gave evidence to show, that the work done, and materials found and provided for the said building under said contract, specifications, and plans, were, with the exception of the flooring of the balcony attached to said building, done, found, and provided before the 1st of October, 1848, and more than three months before the claim of the plaintiff was filed in the clerk's office, and that the work and materials mentioned in said claim as extra, or additional,

were also, with the exception of the last item thereof, done, found, and provided before the said 1st of October; and thereupon offered to prove, by competent testimony, that the work and materials done, found, and provided upon and for the said building, were defective in quality and character, and far inferior in value to what said contract and specifications called for.

To the admissibility of which offered evidence, or any part thereof, the plaintiff, by his counsel, objected; which objection the court sustained, and refused to allow the same, or any part thereof, to be given to the jury. To which refusal this defendant, by his counsel, excepts, and prays the court to sign, seal, and cause to be enrolled, according to the statute, this his 2d bill of exceptions, which is accordingly done this 4th day of December, A. D. 1850.

W. CRANCH, [SEAL.]
JAS. MORSELL. [SEAL.]

Defendant's 3d bill of exceptions.

At the further trial of this cause, the defendant, in addition to the evidence contained in the foregoing bills of exception, which are made part hereof, gave evidence to prove that the work and materials upon and for the balcony aforesaid, might have been, but for the delay and neglect of the plaintiff, completed and finished as required by the said contract, specifications, and plans, in the month of November, 1848; and that all the work and materials done, found, and provided under the said contract, specifications, and plans, might have been fully performed and furnished, and the said agreement fully executed by the plaintiff anterior to the 1st of December, 1848, but for the delay and neglect of the plaintiff.

And therefore the defendant, by his counsel, prayed the court to instruct the jury, that if they shall believe from the evidence aforesaid that there was made and entered into between the plaintiff and defendant, on the 8th day of July, 1847, a special agreement, and that under and in pursuance of said agreement, certain work and materials were done, found, and provided by the plaintiff for the said building, then for such work and materials the plaintiff is not entitled to recover in this action; which instruction the court refused to give, and to such refusal this defendant, by his counsel, excepts, and prays the court to sign, seal, and cause to be enrolled this his third bill of exceptions, which is accordingly done this 3d day of December, A. D. 1850.

W. CRANCH, [SEAL.]
JAS. S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

Defendant's 4th exception.

On the further trial of this cause, the defendant, in support of the issue joined on his part, by his counsel, prayed the court to instruct

the jury, that if they shall believe from the evidence aforesaid that the work and materials furnished under the special agreement aforesaid, and in addition thereto, and mentioned in the account filed by the plaintiff in the clerk's office, or any part of said work and material, were or was done, found, and provided by third persons, upon the personal credit of the plaintiff, and not upon the credit of the building, against which the said account was filed, then the plaintiff is not entitled to recover in this action for such work and materials, or such part thereof, although the jury should further believe that the said work and materials, or such part thereof, were performed and furnished upon and for the said building.

Which instruction the court refused to give, and to such refusal defendant, by his counsel, excepts, and prays the court to sign and seal, and cause to be enrolled, this his 4th bill of exceptions; which is accordingly done this day of December, A. D. 1850.

W. CRANCH, [SEAL.]
JAS. S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

Defendant's 5th bill of exceptions.

On the further trial of this cause the defendant, by his counsel, to maintain the issue on his part joined, "prayed the court to instruct the jury that if they shall believe, from the evidence aforesaid, that the claim of the plaintiff was filed in the office of the clerk of this court on the 9th of March, 1849, and that a portion of the work and material done, found, and provided under the said special agreement, or as additional thereto, was not performed and furnished within the space of three months before the filing of the said claim, then for such portion the plaintiff is not entitled to recover in this action." Which instruction the court refused to give, and to such refusal the defendant, by his counsel, excepts, and prays the court to sign, seal, and cause to be enrolled, this his 5th bill of exception; which is accordingly done this 3d day of December, A. D. 1850.

W. CRANCH, [SEAL.]
JAS. S. MORSELL. [SEAL.]

Defendant's 6th bill of exceptions.

On the further trial of this cause the defendant, by his counsel, to maintain the issue on his part joined, "prayed the court to instruct the jury that if they shall believe, from the evidence aforesaid, that the price agreed to be paid by the special agreement offered in evidence by the plaintiff, was partly in consideration of the skill or superintendence of the plaintiff, then the plaintiff is not entitled to recover in this action the said contract price or any part thereof." Which instruction the court refused to give, and to such refusal the defendant, by his counsel, excepts, and prays the court to sign, seal, and cause to

be enrolled, this his sixth bill of exceptions, which is accordingly done this 4th day of December, A. D. 1850.

W. CRANCH, [SEAL.]
JAS. S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

Defendant's 7th bill of exceptions.

On the further trial of this cause the defendant, by his counsel, in support of the issue on his part joined "prayed the court to instruct the jury that if they shall believe, from the evidence aforesaid, that a portion of the materials found and provided for said building were not found and provided for the same by the plaintiff, but by persons employed by him to find and provide the same for the said building, then for such portion the plaintiff is not entitled to recover in this action."

Which instruction the court refused to give, and to such refusal the defendant, by his counsel excepts, and prays the court to sign, seal, and cause to be enrolled, this his seventh bill of exceptions, which is accordingly done this 4th day of December, A. D. 1850.

W. CRANCH, [SEAL.]
JAS. S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

Defendant's 8th bill of exceptions.

On the further trial of this cause the defendant, by his counsel, to support the issue by him joined, "prayed the court to instruct the jury that if they shall believe, from the evidence aforesaid, that the plaintiff did and performed himself no work or labor upon or for the said building, or in erecting or constructing of the same, but that said work or labor was done and performed by mechanics and laborers employed and hired by him for the purpose, then the plaintiff is not entitled to recover for such work and labor in this action." Which instruction the court refused to give, and to such refusal the defendant, by his counsel, excepts, and prays the court to sign, seal, and cause to be enrolled, this his eighth bill of exceptions, which is accordingly done this 4th day of December, A. D. 1850.

W. CRANCH, [SEAL.]
JAS. S. MORSELL, [SEAL.]
JAS. DUNLOP. [SEAL.]

Defendant's 9th bill of exceptions.

On the further trial of this cause, the defendant, by his counsel, in support of the issue on his part joined, prayed the court to instruct the jury, that if, upon the evidence aforesaid, they shall believe the same, the plaintiff is not entitled to recover for the work and materials, or any part thereof, done, found, and provided under the said special

agreement; which instructions the court refused to give, and to such refusal the defendant, by his counsel, excepts, and prays the court to sign, seal, and cause to be enrolled this his ninth bill of exception; which is accordingly done this 4th day of December, A. D. 1850.

W. CRANCH, [SEAL.]
JAMES S. MORSELL, [SEAL.]
JAMES DUNLOP. [SEAL.]

Defendant's 10th bill of exception.

On the further trial of this cause, the defendant, to support the issue by him joined, prayed the court to instruct the jury, that if the jury shall believe from the evidence aforesaid, that the plaintiff has not fully executed and performed the said agreement entered into between him and the defendant, and so far as the same were not dispensed with by mutual consent, or by the directions of the defendant, then the plaintiff is not entitled to recover in this action the said contract price, or any part thereof; which instruction the court refused to give, and to which refusal, the defendant, by his counsel, excepts, and prays the court to sign, seal, and cause to be enrolled this his tenth bill of exception; which is accordingly done this 3d day of December, A. D. 1850.

W. CRANCH, [SEAL.]
JAMES S. MORSELL, [SEAL.]
JAMES DUNLOP. [SEAL.]

Writ of error produced.

And whereas, afterwards, to wit, on the twenty-fourth day of December, in the year of our Lord one thousand eight hundred and fifty, the said defendant, by his attorney aforesaid, produced and filed in court here the United States writ for the correction of errors, of and upon the premises, directed to the judges of the circuit court of the District of Columbia, commanding that the record and proceedings aforesaid, so as aforesaid had and done, with all things thereunto relating, be transmitted to the Supreme Court of the United States, at Washington, on or before the first Monday in December next thereafter; and in pursuance thereof, and according to the form and effect of the law in such case made and provided; a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, together with said writ of error, citation, and a copy of the appeal bond hereto annexed, is hereby transmitted to the said Supreme Court of the United States accordingly.

Test: JOHN A. SMITH, *Clerk.*

Clerk's certificate.

DISTRICT OF COLUMBIA, *sct.*

I, John A. Smith, clerk of the circuit court of the District of Colum-

bia, for the county of Washington, hereby certify, that the aforegoing is truly taken from the record of proceedings of the said circuit court of the District of Columbia, for the county of Washington.

In testimony whereof I hereunto subscribe my name, and affix the [L. S.] seal of the said circuit court, this twenty-first day of January, in the year of our Lord eighteen hundred and fifty-one.

JOHN A. SMITH, *Clerk*.